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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,007	09/19/2003	Kenneth W. Whitley	P-5655/3	9137
26253	7590	09/13/2005		
DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-1880			EXAMINER NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,007

Applicant(s)

WHITLEY, KENNETH W.

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/28/05</u> .                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Declaration filed on 6/27/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the US 2004/0108294 reference.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the US 2004/0108294 reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

No copy of the IDR as Exhibit A is provided or submitted in the record.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 7, 12, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Doi (4,880,1270). Doi discloses, figs. 2-4, a cap assembly comprising a cap body 3 having a central orifice, a plug seal 30 having an annular groove, and a projecting ring 30 located on an undersurface of the cap body for engagement with the plug seal.

5. Claims 1, 2, 12, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Takano (5,984,124)). Takano discloses, figs. 1-4, a cap assembly comprising a cap body 10, a plug seal 9, and a projecting ring 14 located on an undersurface of the cap body for engagement with the plug seal (see fig. 3A & 3B).

6. Claims 1-7, 11-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Bloom et al. (pub. US 2004/108294). Bloom et al. disclose, in figs. 1-4, a cap assembly comprising a cap body 36 having a central orifice, a plug seal 30 having flanges 50, an annular groove (see fig. 6) and tabs 48 on a bottom surface of the plug seal.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7 and 12-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gach et al. (4,747,500) in view of Doi.

Gach et al. disclose, in figs. 13- 15, a cap assembly comprising a cap body 160 having a central orifice, a plug seal 180 having an annular groove.

Gach et al. does not disclose a projecting ring located on an undersurface of the cap body for engagement with the plug seal.

Doi teaches a projecting ring 30 located on an undersurface of the cap body for engagement with the plug seal.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in the Gach et al. invention with a projecting ring located on an undersurface of the cap body for engagement with the plug seal, as taught by Doi, in order to facilitate of air venting for the cap.

9. Claims 1-3, 5, 7 and 11-16. 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnani (3,924,772) in view of Doi.

Magnani discloses, in figs. 1-3, a cap assembly comprising a cap body 1 having a central orifice, a plug seal 8 having flanges 9, and an annular groove 10.

Magnani does not disclose a projecting ring located on an undersurface of the cap body for engagement with the plug seal.

Doi teaches a projecting ring 30 located on an undersurface of the cap body for engagement with the plug seal.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in the Magnani. invention with a projecting ring located on an undersurface of the cap body for engagement with the plug seal, as taught by Doi, in order to facilitate of air venting for the cap.

10. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnani in view Doi or Gach et al. in view Doi and in view of Luenser et al. (4,462,502) or McIntosh (4,423,821).

Magnani or Gach et al. do not disclose the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove.

Luenser et al. or McIntosh teach a plug seal including an annular groove and atop wall of a cap body including a projection to be received in the groove.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in Magnani or Gach invention in view of Doi with the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove, as taught by Luenser et al. or McIntosh, in order to facilitate the retaining the seal plug within the top wall of the cap.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-10 and 12-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NATHAN NEWHOUSE can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

September 8, 2005

